
TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

**Administrative Rules Oversight Committee Notice
One Year Requirement ([IC 4-22-2-25](#))
LSA Document #09-87**

To: Representative Scott Pelath, Chairperson
Administrative Rules Oversight Committee
c/o Legislative Services Agency
Attn: Sarah Burkman
200 West Washington Street, Suite 301
Indianapolis, IN 46204-2789

From: Mason W. Pike, Staff Attorney

Re: LSA Document #09-87
Amendments to Neuropsychological and Psychological Testing

Date: September 30, 2009

CC: Steve Barnes, Indiana Register, Legislative Services Agency
Jessaca Turner Stults, General Counsel, FSSA
Patricia Casanova, Director, Office of Medicaid Policy and Planning
Jeremy Brown, Director, Coverage and Benefits (OMPP)

On behalf of the Family and Social Services Administration, Office of Medicaid Policy and Planning, I am submitting this memo to the Administrative Rules Oversight Committee in compliance with [IC 4-22-2-25](#), because the agency has determined that the promulgation of the captioned rule may not be completed within one year after publication of the Notice of Intent to Adopt a Rule.

The agency published its Notice of Intent to Adopt a Rule for LSA Document #09-87 on February 11, 2009 (DIN: [20090211-IR-405090087NIA](#)). The proposed rule was presented to the FSSA Rules Committee for pre-review on June 9, 2009, and to the Medicaid Advisory Committee on August 11, 2009. The economic impact analysis was submitted to the State Budget *[sic]* Agency on July 1, 2009. The agency has several additional steps it must take before this rule can be fully promulgated. Pursuant to [IC 4-22-2-28](#), the Office of Management and Budget must prepare a fiscal impact statement not more than forty-five days after receiving a proposed rule from an agency. A notice of public hearing must also be published along with the proposed rule *[sic]* ([IC 4-22-2-24](#)). A public hearing must be held and the agency afforded the opportunity to review and respond to any public comments. Due to these requirements and the time available, the agency may not be able to have the final rule to the Governor for signature under the time restraints required by [IC 4-22-2-25\(a\)](#).

In addition to the circumstances mentioned above, there are additional factors to be taken into consideration. Any rule adopted by the agency must be approved by the Family and Social Services Committee (see Ind. Code § 12-8-3-1 et seq.), a committee that meets only once per month. The Committee currently has several vacancies, and it is possible for a monthly meeting to occur without a quorum. Therefore, no action would take place on an adopted rule. This would mean delayed approval until the next monthly meeting of the Committee and presence of a quorum. Following approval by the FSSA Committee, the rule must be submitted to the Attorney General's office. Pursuant to Ind. Code § 4-22-2-32, the Attorney General has forty-five days to complete his review of a rule. Whether a quorum is present at a monthly meeting of the FSSA Committee and the Attorney General's time frame for rule review are outside of the agency's control. For these reasons, it is unlikely that the rule will be approved by the Governor within one year of the date of publication of the notice of intent. The agency expects that LSA Document #09-87 can be approved by the Governor by September 30, 2010.

This notice setting forth the expected date of approval of LSA Document #09-87 as September 30, 2010, is being submitted in a timely manner. October 19, 2009, is the two hundred and fiftieth day after publication of the Notice of Intent to Adopt a Rule.

Posted: 10/14/2009 by Legislative Services Agency
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